CF0000110177

Division Bench (Civil)

IN THE HIGH COURT OF MADHYA PRADESH : JABALPUR

M.P. No. 442 /90

Virendra Singh Naikadi,
S/o Shri Balram Singh,
Aged about 26 years
R/o Tudila, Pargana Gohad,
Distt. Bhind (M.P.) - Petitioner

Versus

1. M.P. State Road Transport Corporation,
Through: Regional Manager,
MPSRTC, Bilaspur.

2. Industrial Court of M.P.
Raipur Bench, Raipur - Respondents

PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

CF0000110177

COURT FEE 20 Rs. COURT FEE 5 Rs. INDIA

Attest
A.R

Writing

d vide
9-10-06

RESPONDENT NO 1 :

Chhattisgarh Infrastructure
Development Corporation, Thr:
Its Divisional Manager,
Transport Section,
Bilaspur (CG)

AFR

28.2.07

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 442 of 1990

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Petitioner : Virendra Singh Naikadi

Versus

Respondents : Chhattisgarh Infrastructure Development Corporation Ltd. & another

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri P.S. Koshy, Advocate with Shri Vinod Deshmukh, Advocate for the Petitioner.

Shri B. D. Guru, Advocate for the Respondent No. 1.

ORDER

(Passed on this 28th day of February, 2007)

1. The present petition filed under Article 226/227 of the Constitution of India challenges the validity of the order dated 11.9.1989 (Annexure D) passed by the Industrial Court/respondent No. 2 in Appeal No. 16/MPIR Act/86.

2. The undisputed facts, in nutshell, are that the petitioner was appointed as Conductor in the erstwhile Madhya Pradesh State Road Transport Corporation in the year 1985 and was posted at Chindwada Depot. The petitioner was terminated from service vide order dated 13.5.1987 under the provision of Standing Order 11 (A), as the petitioner remained absent from duties on 10.5.1987 and for the period 24.3.1987 to 30.4.1987 i.e. total 38 days he remained absent without getting the leave sanctioned.

3. Being aggrieved, the petitioner moved an application under Section 31 (3) of the Madhya Pradesh Industrial Relations Act, 1960 before the Labour Court. The Labour Court, after having considered all the

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facts, came to the conclusion that no enquiry was conducted before passing the order of termination and the petitioner was not given opportunity of hearing. The respondent No.1 has failed to prove any misconduct against the petitioner and any justification for terminating him from services. In view of that, the Labour Court by order dated 12.12.1987 (Annexure C) found that the order of termination was illegal and improper and accordingly, directed the respondent No. 1 to reinstate the petitioner on the post of the Conductor with back wages.

4. Being aggrieved by the order dated 12.12.1987 passed by the Labour Court in Case No. 3062/MPIR – 1/87, the respondent No. 1 filed an appeal against the order of reinstatement and grant of back wages, being Appeal No. 16/MPIR Act/86. The Industrial Court, after having considered the cases of both the parties, by order dated 11.9.1989 (Annexure D) quashed the order passed by the Labour Court holding that the petitioner had failed to produce any pleading for unauthorized absence of 38 days which comes within the purview of grave misconduct. The Labour Court has committed error in relying on the evidence of the petitioner without any pleading.

5. Shri P.S. Koshy, learned counsel appearing for the petitioner submits that admittedly, the petitioner was not afforded opportunity of hearing and no enquiry was conducted before passing the termination order.

6. Shri B. D. Guru , learned counsel appearing for the respondent No. 1, per contra, submits that the petitioner was rightly terminated, invoking the provisions of Standing Order 10(A).

7. I have heard learned counsel for the parties and perused the records appended to the petition and return.

8. In the facts and circumstances of the case, when the petitioner was not afforded proper opportunity of hearing and no enquiry was held,

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the termination order dated 13.5.1987 (Annexure A) cannot be held as legal and just.

9. Be that as it may, since the petitioner was not given opportunity of hearing and no enquiry was conducted, in the facts and circumstances, it is a clear case of violation of principles of natural justice and as such it is unnecessary to go into the merits of the contentions raised by the respondent No.1.

10. Learned counsel appearing for the petitioner cited a decision of this Court in the case of **Ramesh Kumar Sahu Vs. C. G. Infrastructure Development Corporation Ltd. & others** { 2006 (2) C.G.L.J. 197} and submits that the facts and question of law involved in that case are identical to that of the case in hand.

11. Learned counsel appearing for the respondent No.1 would submit that it is true that the facts of the present case are identical to the facts of the case of **Ramesh Kumar Sahu** (supra). However, that case has not considered the objection of the respondent No.1 with regard to the non-impleadment of the Madhya Pradesh State Road Transport Corporation (MPSRTC) as a necessary party. It is further submitted that the said issue was not raised in that petition. He stated that the liability of the employees who had retired from the places, which fall today within the territorial jurisdiction of the State of Chhattisgarh, has been transferred to the respondent No.1 by Notification dated 13.12.2002, which reads as under:-

> " कमांक एफ 6–8 परि/02–राज्य शासन "मध्यप्रदेश राज्य सडक परिवहन निगम" के विभाजन के फलस्वरूप प्राप्त होने वाली आस्तियाँ, दायित्व, अधिकारी एवं कर्मचारियों को, अभिप्राय करने हेतु छत्तीसगढ अधोसंरचना विकास निगम को अधिकृत करता है उक्त विभाजन से प्राप्त होने वाले कर्मचारियों की सेवा शर्तें पूर्वानुसार छत्तीसगढ अधोसंरचना विकास निगम, में प्रभावी रहेगी, आस्तियों एवं दायित्वों के प्रबंधन तथा कर्मचारियों के पुनर्वास को कार्यवाही राज्य शासन द्वारा समय–समय पर जारी निर्देशों एवं नीतियों के अनुरूप की जावेगी ।"

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12. From the reading of the said notification it is clear that the liability with regard to the service condition of the petitioner, which may accrue, has been transferred to the respondent No.1 on 27.12.2002. Thus the contention of the respondent No.1 with regard to the non-impleadment of the M.P.S.R.T.C. is rejected.

13. In view of aforementioned reasons and the decision of this Court in the case of **Ramesh Kumar Sahu** (supra), this petition is allowed. The impugned order dated 11.9.1989 (Annexure D) passed by the Industrial Court/respondent No. 2 in Appeal No. 16/MPIR Act/86 is set aside and quashed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur